

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

Vol. 25

DECEMBER 4, 1991

No. 48/49

This issue contains:

U.S. Customs Service

T.D. 91-94

General Notice

U.S. Court of International Trade

Slip Op. 91-97

Abstracted Decisions:

Classification: C91/301 Through C91/314

AVAILABILITY OF BOUND VOLUMES

See inside back cover for ordering instructions

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

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The decisions, rulings, notices, and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

U.S. Customs Service

Treasury Decision

(T.D. 91-94)

SYNOPSIS OF DRAWBACK DECISIONS

The following are synopses of drawback contracts approved March 27, 1990, to March 25, 1991, inclusive, pursuant to Subparts A through C, Part 191, Customs Regulations.

In the synopses below are listed for each drawback contract approved under 19 U.S.C. 1313(a) and (b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the proposal was signed, the basis for determining payment, the Regional Commissioner to whom the contract was forwarded or approved by, and the date on which it was approved.

Dated: November 18, 1991.

File: 223515

JOHN DURANT,

Director,

Commercial Rulings Division.

(A) Company: Brown & Williamson Tobacco Corp.
Section 1313(a) articles: Cigarette tobaccos in bulk; cigarettes
Section 1313(a) merchandise: Oriental or Turkish tobaccos; menthol
Section 1313(b) articles: Cigarette tobaccos; cigarettes; smoking
tobaccos; cut-plug tobaccos
Section 1313(b) merchandise: Flue-cured and burley tobaccos; raw
sugar; cigarette papers; aluminum foil; menthol; dual charcoal filter
rod; polypropylene film
Factories: Macon, GA; Winston-Salem, NC
Proposal signed: September 18, 1987
Basis of claim: Used in
Contract forwarded to RC of Customs: Chicago, June 26, 1990
Revokes: T.D. 81-301-C

(B) Company: Continental Polymers, Inc.

Section 1313(a) articles: Clear and colored acrylic plastic pellets and sheets

Section 1313(a) merchandise: Methyl methacrylate (MMA)

Section 1313(b) articles: Clear and colored acrylic plastic pellets and sheets

Section 1313(b) merchandise: Methyl methacrylate (MMA)

Factories: Compton, CA; Memphis, TN

Proposal signed: July 7, 1989

Basis of claim: Used in, less valuable waste

Contract forwarded to RC of Customs: Long Beach, March 27, 1990

(C) Company: Fina Oil and Chemical Co.

Section 1313(a) articles: Polypropylene homopolymer resins; polypropylene copolymer resins

Section 1313(a) merchandise: High-yield titanium based catalyst

Section 1313(b) articles: Polypropylene homopolymer resins; polypropylene copolymer resins

Section 1313(b) merchandise: Propylene monomer

Factory: Deer Park, TX

Proposal signed: May 25, 1990

Basis of claim: Used in

Contract forwarded to RC of Customs: Houston, March 21, 1991

(D) Company: Glen Raven Mills, Inc.

Section 1313(a) articles: Textured nylon yarn

Section 1313(a) merchandise: Nylon yarn

Section 1313(b) articles: Textured nylon yarn

Section 1313(b) merchandise: Nylon yarn

Factory: Norlina, NC

Proposal signed: October 18, 1989

Basis of claim: Used in

Contract forwarded to RC of Customs: Miami, March 25, 1991

(E) Company: Ingersoll-Rand Co.

Section 1313(a) articles: Universal spiral rods

Section 1313(a) merchandise: Rod blanks

Section 1313(b) articles: Universal spiral rods

Section 1313(b) merchandise: Rod blanks

Factories: Roanoke, VA; Windmore, PA; Madison Heights, MI

Proposal signed: July 10, 1990

Basis of claim: Appearing in

Contract issued by RC of Customs in accordance with § 191.25(b)(2):

New York, July 27, 1990

Revokes: T.D. 78-255-K as amended by T.Ds. 78-380-H and 79-260-P

(F) Company: The Lubrizol Corp.

Section 1313(a) articles: Lubricant additives

Section 1313(a) merchandise: Intermediate 0.710.0

Section 1313(b) articles: Lubricant additives

Section 1313(b) merchandise: Intermediate 0.710.0

Factories: Painesville, OH; Deer Park & Pasadena, TX

Proposal signed: May 21, 1990

Basis of claim: Used in

Contract forwarded to RC of Customs: Chicago, November 23, 1990

(G) Company: The Lubrizol Corp.

Section 1313(a) articles: Lubricant additives

Section 1313(a) merchandise: Preventol CI-7-100 (methyl-benzotriazole)

Section 1313(b) articles: Lubricant additives

Section 1313(b) merchandise: Preventol CI-7-100 (methyl-benzotriazole)

Factories: Painesville, OH; Deer Park & Pasadena, TX

Proposal signed: May 21, 1990

Basis of claim: Used in

Contract forwarded to RC of Customs: Chicago, March 21, 1991

(H) Company: R. J. Reynolds Tobacco Co.

Section 1313(a) articles: Cigarettes; various blended cigarette tobaccos; expanded (puffed) tobaccos; reconstituted leaf tobacco; denicotinized tobacco

Section 1313(a) merchandise: Oriental tobacco

Section 1313(b) articles: Cigarettes; various blended cigarette tobaccos; expanded (puffed) tobaccos; reconstituted leaf tobacco; denicotinized tobacco

Section 1313(b) merchandise: Various grades of five-cured and burley machine threshed tobaccos, scrap tobaccos; various grades of cigarette paper; charcoal acetate filter rods; polypropylene wraps; cigarette plug wraps

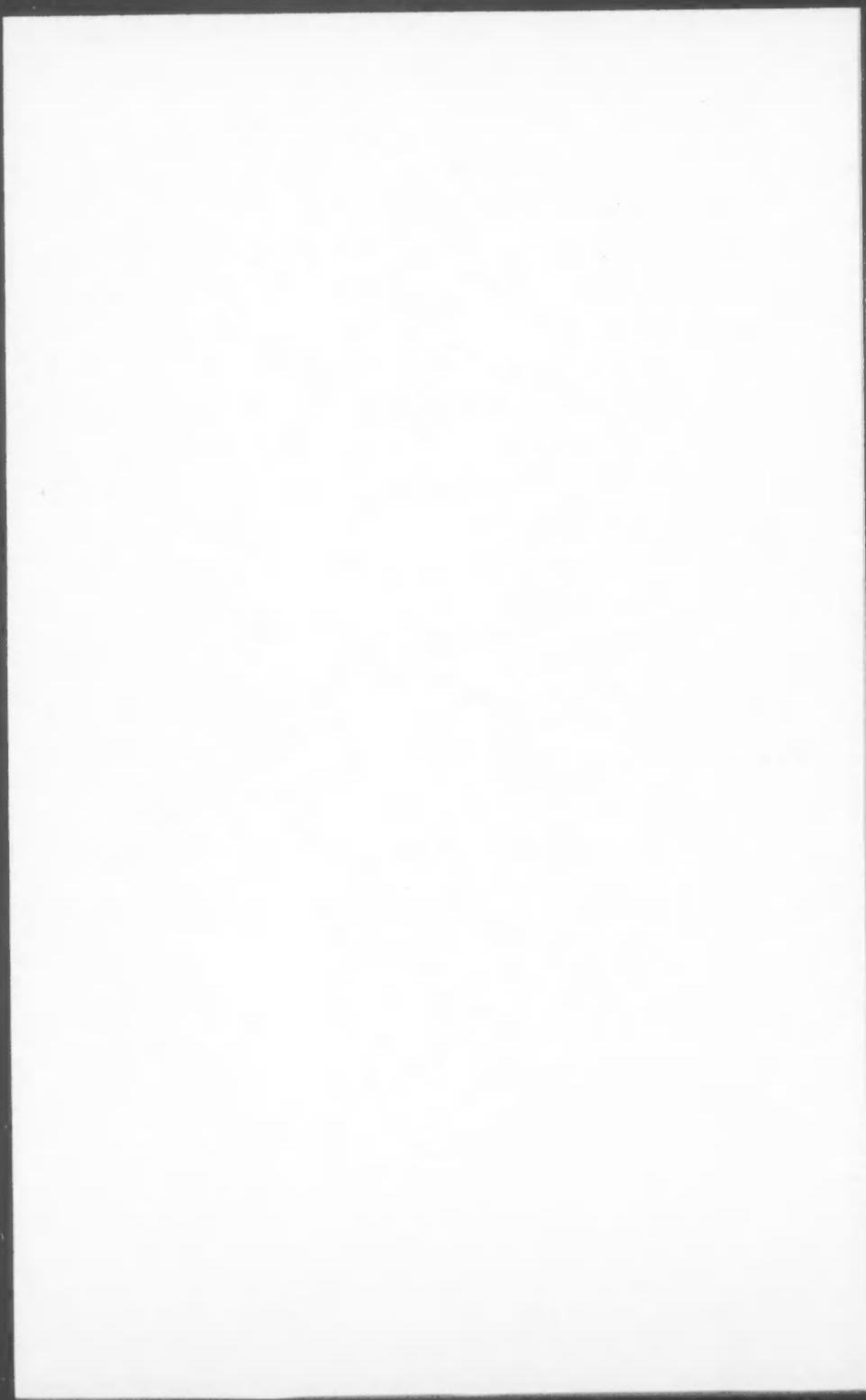
Factories: Winston-Salem & Forsyth County, NC

Proposal signed: May 16, 1988

Basis of claim: Used in

Contract forwarded to RC of Customs: Miami, February 4, 1991

Revokes: T.D. 79-192-T and T.D. 80-94-P



U.S. Customs Service

General Notice

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of availability of Valuation Encyclopedia.

FOR FURTHER INFORMATION CONTACT: Thomas Lobred, Value and Marking Branch, Office of Regulations and Rulings, (202) 566-2938.

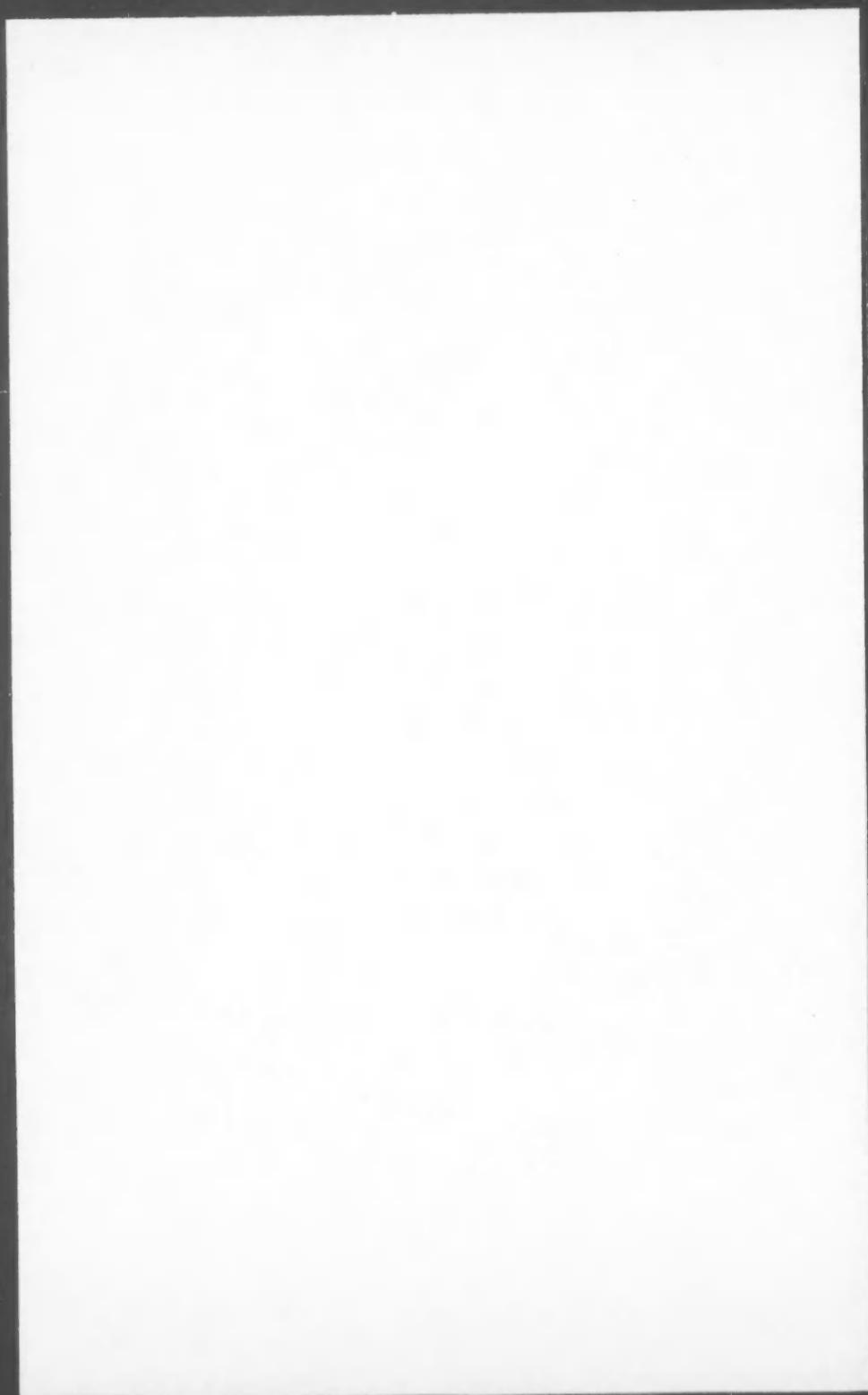
SUPPLEMENTARY INFORMATION:

The purpose of this notice is to advise the public that a value encyclopedia has been prepared on the basis of more than 10 years experience by the U.S. Customs Service in appraising imported merchandise based on a valuation system which implemented the provisions of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (Customs Valuation Code).

The encyclopedia is comprised of relevant valuation statutory provisions, Customs regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and finally, U.S. Customs Headquarters rulings issued by the Office of Regulations and Rulings. Copies of this encyclopedia may be obtained by contacting the Superintendent of Documents, U.S. Printing Office, Washington, D.C., 20402 (202) 783-3238 at a price of \$15.00 per copy. All subscribers of the U.S. Customs Rulings Diskette Subscription Service will receive a copy on diskette as part of their 1992 subscription fee. The value encyclopedia will also be available on the Customs Electronic Bulletin Board.

Dated: November 18, 1991.

SAMUEL H. BANKS,
Assistant Commissioner,
Office of Commercial Operations.



United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Judges

Gregory W. Carman*
Jane A. Restani
Dominick L. DiCarlo
Thomas J. Aquilino, Jr.

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

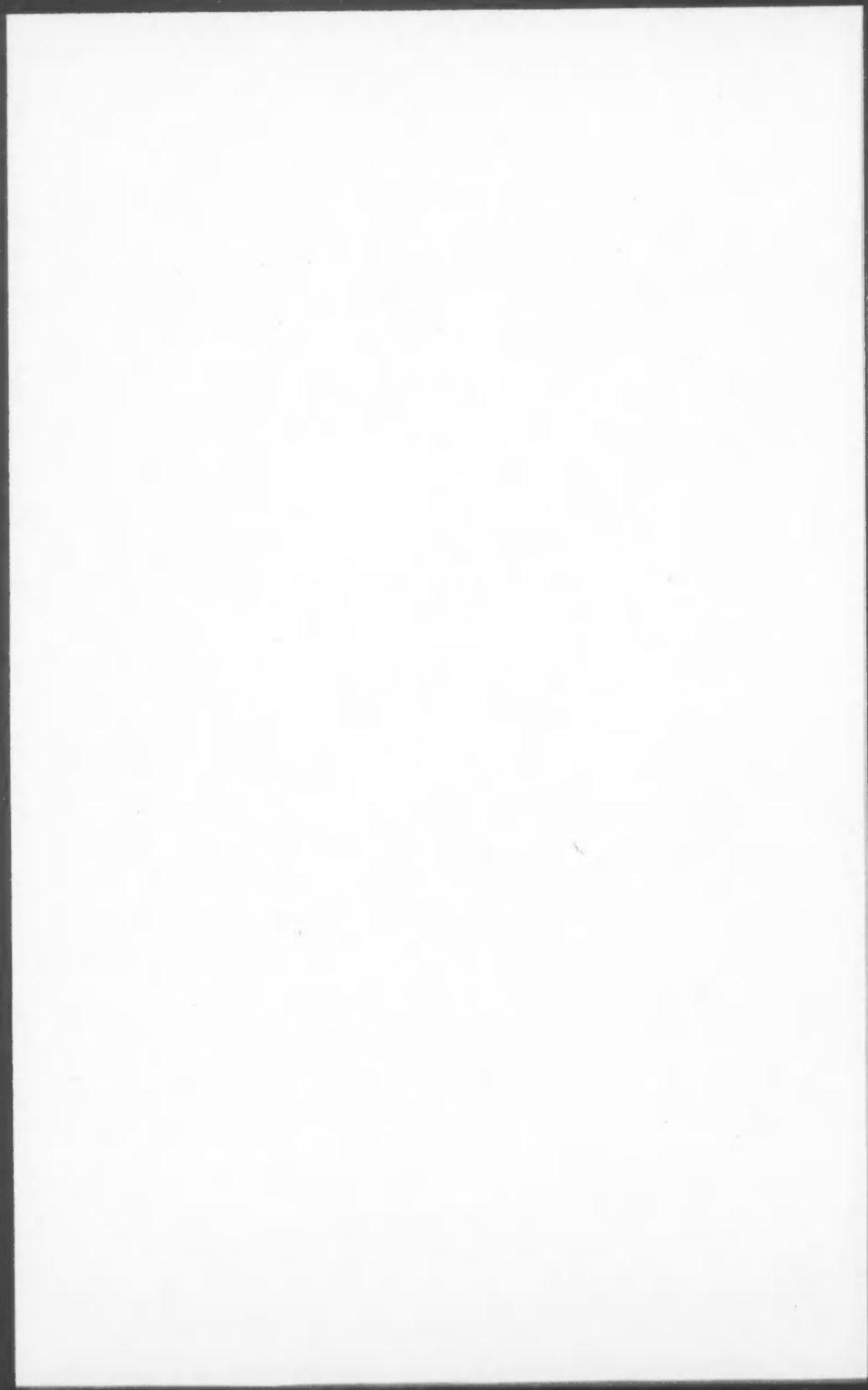
Senior Judges

Morgan Ford
James L. Watson
Herbert N. Maletz
Bernard Newman
Samuel M. Rosenstein
Nils A. Boe

Clerk

Joseph E. Lombardi

* Acting as Chief Judge, effective May 1, 1991, pursuant to 28 U.S.C. § 253d.



Decisions of the United States Court of International Trade

(Slip Op. 91-97)

UNITED STATES, PLAINTIFF *v.* NEMAN BROTHERS & ASSOCIATES, AND
YOEL NEMAN, DEFENDANTS

Court No. 89-07-00444

[Defendants move for summary judgment for failure to bring the action within five years "of the date upon which the action should have been brought," because defendants allegedly never received acknowledgement of a one-year waiver it sent to Customs. Plaintiff alleges that the waiver was acknowledged and returned. Held: Defendants' motion is denied as substantial factual issues remain to be decided.]

(Dated November 8, 1991)

Stuart M. Gerson, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, (*Anthony H. Anikeeff*), (*Carla Anderson Johnson*, Assistant Regional Counsel, U.S. Customs Service, Of Counsel) for plaintiff.

Yoel Neman, pro se, for defendants.¹

MEMORANDUM OPINION AND ORDER

I. Introduction:

MUSGRAVE, Judge: This case comes before the Court on Defendants' motion for summary judgment. Defendants ("Neman Brothers" or Neman") claim that the case should be time barred by 19 U.S.C. § 1621 because they never received acknowledgement of their proposed waiver of the statute. In the alternative, defendants argue that the government's claim should be barred because the case was filed one year and one day after the proposed waiver period.

The government claims that the waiver was executed and returned, and copies of the waiver and a transmittal letter to defendants are attached to its memorandum in opposition. Plaintiff argues that a one year waiver includes the anniversary date of the waiver.

Defendants' motion is denied because significant questions of fact remain, and this matter is inappropriate for summary judgment.

II. Facts:

The government seeks to recover penalties from Neman Brothers for allegedly fraudulent entry of fabrics falsely declared as the product of

¹ Defendants were represented by counsel until May 23, 1991.

Japan, between August 1, 1983 and July 27, 1984. The alleged fraud was first discovered on May 1, 1984.

During the investigation, defendants apparently agreed in October, 1987 to waive for one year the statute of limitations that was due to expire on August 1, 1988. On October 9, 1987, Neman Brothers sent Customs a letter waiving the § 1621 time limit for "one (1) year commencing August 1, 1988." Plaintiff's Exhibit 3. This letter was prepared by Neman Brothers' counsel at the time and signed by its president. In it, Mr. Leon Neman states that the waiver is "made knowingly and voluntarily by Newman Brothers & Associates in order that Neman Brothers & Associates might obtain the benefits of the orderly continuation and conclusion of an administrative proceeding currently being conducted by the U.S. Customs Service * * *." Plaintiff's Exhibit 3.

Although defendants and Mr. Fertman claim to attach a copy of the waiver to its motion, none was submitted to the Court. The government has produced a copy of the waiver countersigned on May 20, 1988 by John Elkins, Acting Director of the Regulatory Procedures and Penalties Division of the Customs Service, along with a letter dated May 25, 1988 transmitting the waiver back to Neman's attorney. Although Neman Brothers' attorney admits that his address is the same as that on Elkins letter, he states that he never received it. Declaration of Leonard M. Fertman, at 2.

This action was filed on August 1, 1989.

III. Summary Judgment:

On a motion for summary judgment, there may be no genuine issues of material fact in dispute, as the Court cannot try issues of fact. *Carter Footwear v. United States*, 10 C.I.T. 618 (1986); Wright, *Law of Federal Courts* § 99 at 664 (4th ed. 1983) (court may only determine whether there are issues to be tried). Summary judgment may be inappropriate where the parties agree on the basic facts, but disagree about the factual inferences to be drawn from those facts; if reasonable minds differ on the inferences arising from undisputed facts, then the court should deny summary judgment. *Warrior Tombigbee Transportation Co. v. M/V Nan Fung*, 695 F.2d 1294, 1296-97 (11th Cir. 1983); *Mitsui Foods, Inc. v. United States*, 12 C.I.T. 276, 278, 688 F. Supp. 605, 606 (1988), *aff'd* 7 Fed. Cir. (T) 36, 867 F.2d 1401 (1989). In addition, the party against whom the motion is made is entitled to all the favorable inferences that may be reasonably drawn from the evidence, and if when so reasonably viewed reasonable minds might reach different conclusions, the motion should be denied. *Caylor v. Virden*, 217, F.2d 739 (8th Cir. 1955).

On the facts before the Court, there remains a significant questions of whether the waiver was executed and returned to defendants. The Court must draw all inferences in the government's favor and give the government's affidavits the weight they are due. If the government's statements are true, then defendants did receive the executed waiver and defendants' motion for summary judgment must be denied.

IV. One Year Waiver:

Defendants argue that even if the waiver was accepted by the government, it was only for one year from August 1, 1988. The government filed this action on August 1, 1989. According to defendants, July 31, 1989 was the last day the statute of limitations was waived.

The government argues that statutes of limitation are construed to include the anniversary date of the accrual of the cause of action. *Lawson v. Conyers Chrysler, Plymouth & Dodge Trucks*, 600 F.2d 465 (5th Cir. 1979); *Krajci v. Provident Consumer Discount Co.*, 525 F. Supp. 145 (E.D. Pa. 1981) (complaint filed on anniversary date is timely); Fed. R. Civ. P. 6(a).² The rule has been analogized to statute of limitation waivers. *United States v. Hawner*, 576 F.2d 650 (5th Cir. 1978). Defendants did not cite any precedent to support the proposition that the one year waiver does not include the anniversary date. Because Rule 6(a) of this Court is analogous to Fed. R. 6(a), and other precedent holds that the time computation method used in Fed. R. 6(a) applies to waivers, then the "anniversary" method will be used in this case. The waiver period included August 1, 1989, and the government's suit is timely.

Whether the government's cause of action accrued on the discovery of the alleged fraud (May 4, 1984), or on the first date that the alleged fraud took place (August 1, 1983) also remains to be decided. The government points out that the earliest date that the § 1621 statute of limitations would have run was August 1, 1988, for negligent or grossly negligent violations. Assuming that the waiver was accepted by the government and returned to defendants, the waiver would have been effective until August 1, 1989, the date suit was filed. Therefore, none of the government's causes of action are jeopardized by the statute of limitations.

V. Conclusion:

After examining the evidence and law presented to support the motion for summary judgment, this Court believes that the factual issue of whether the waiver was ever signed by Customs and returned to defendants remains to be decided. For this reason, defendant's motion for summary judgment is DENIED.

²CIT Rule 6(a) provides:

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, or when the act to be done is the filing of a paper in court, a day on which weather or the conditions have made the office of the clerk inaccessible, in which event the period runs until end of the next day which is not one of the aforementioned days.***

U.S.C.I.T. Rule 6(a) (1991) (footnote omitted).

ABSTRACTED CLASSIFI

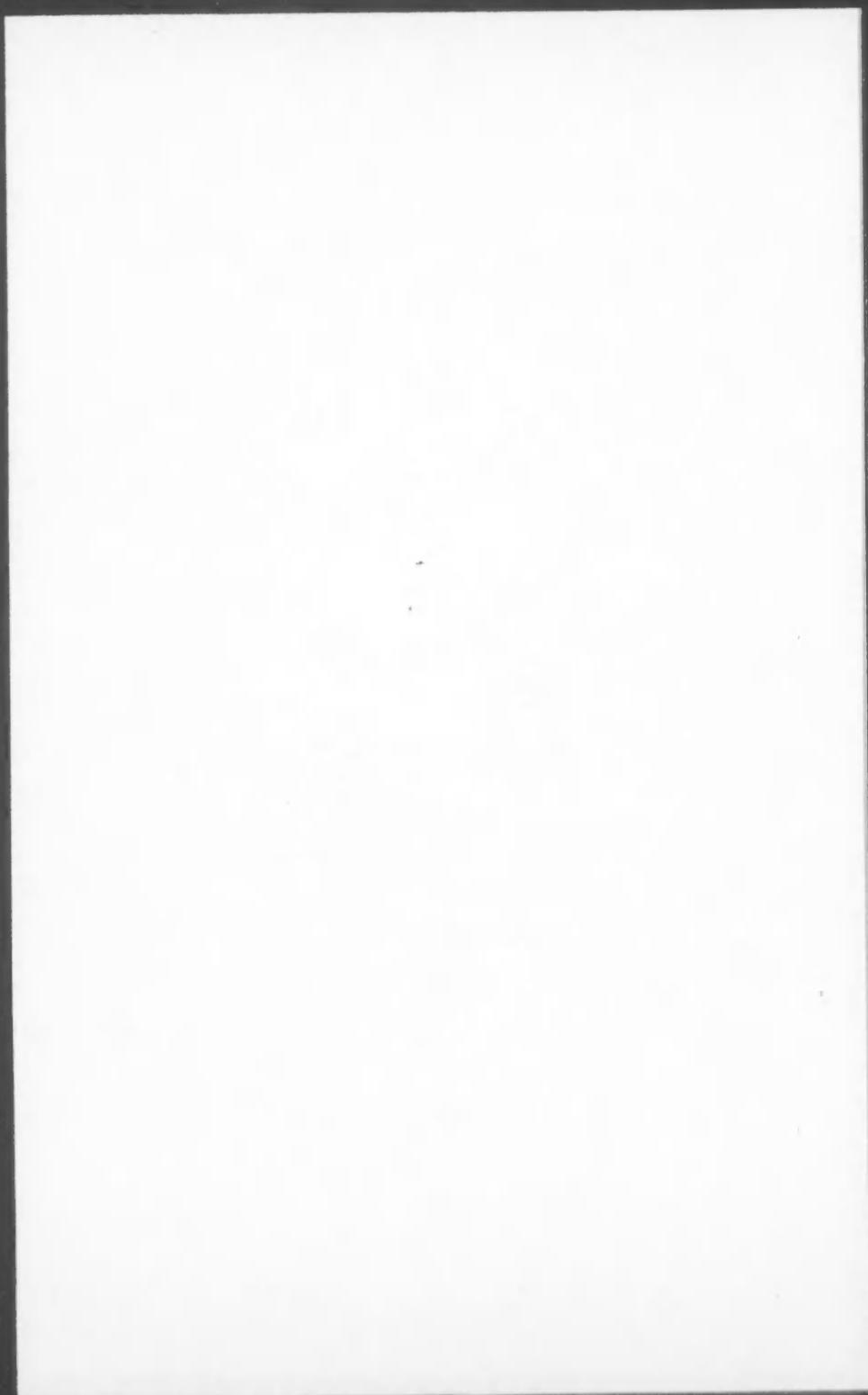
DECISION NO. DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSMENT
C91/301 10/29/91 Goldberg, J.	Riekes Crisa Corp.	78-5-00755	546.56 30%
C91/302 10/30/91 Aquilino, J.	Anchor Time, Inc.	88-7-00529	716.09-716.45 715.05, etc. Various rates
C91/303 10/30/91 Aquilino, J.	Dynamic Supply Co.	84-7-00986	716.09-716.45 715.05, etc. Various rates
C91/304 10/30/91 Carman, J.	Pelikan, Inc.	87-7-00814	389.62 8¢ per lb. +
C91/305 10/30/91 Aquilino, J.	Wallem Int'l Corp.	87-3-00515	716.09-716.45 715.05, etc. Various rates
C91/306 10/30/91 Carman, J.	Wish-bone Trading Co.	90-3-00154	6201.93.35 29.5% (for jacket portion) and 6203.43.40 29.7% (for pants)

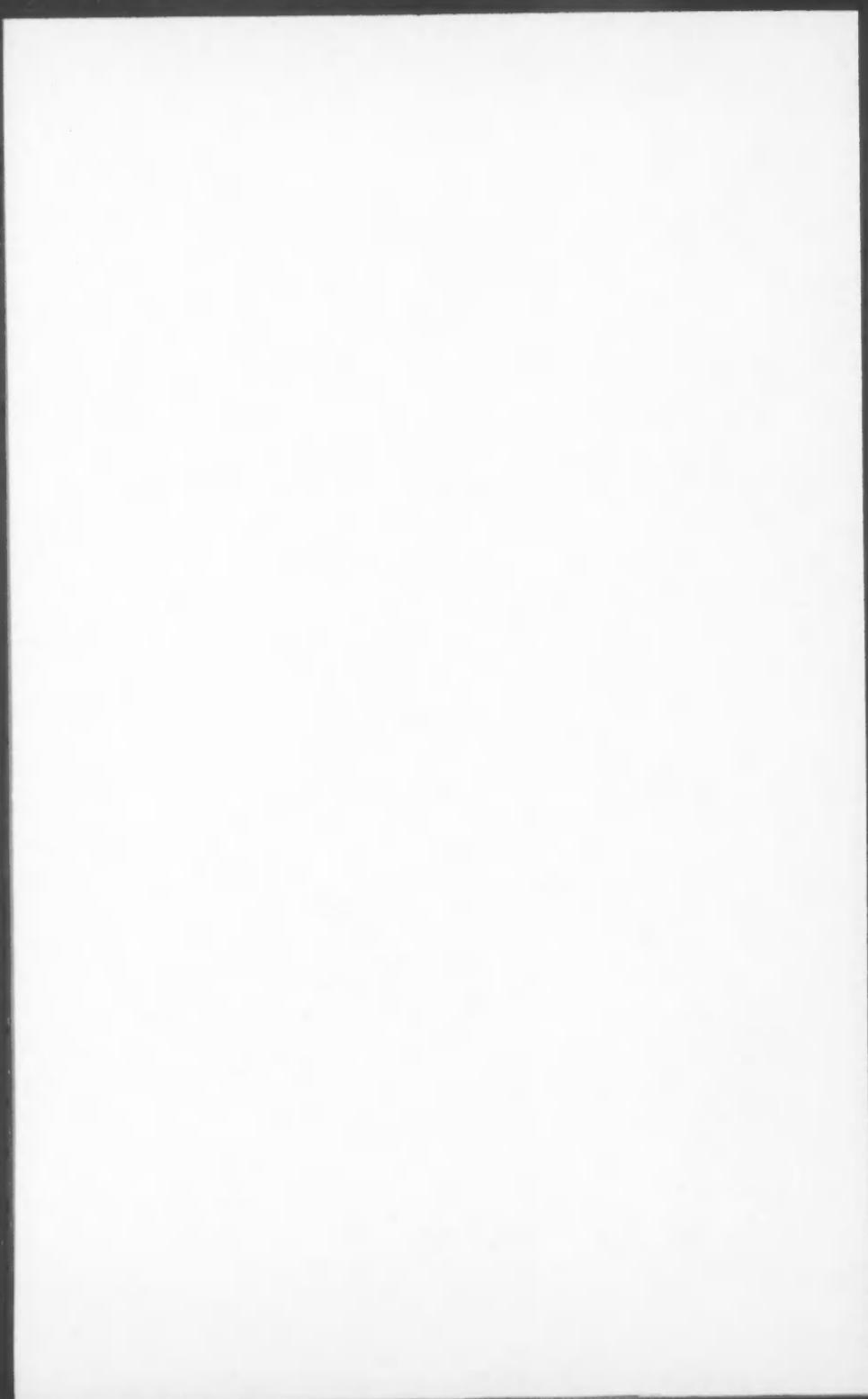
CATION DECISIONS

ED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
	548.05 12.5%	Riekes Crisa Corp. v. U.S., S.O. 90-33 (1990)	Laredo Glasses for Yard Ales
5, tes	688.45, 688.42, 688.43, 688.36, etc. Various rates	Belfont Sales Corp. v. U.S., 878 F.2d 1413 (1989) or Texas Instruments Inc. v. U.S., 673 F.2d 1375 (1982)	New York Quartz analog watches, etc.
5, tes	688.45, 688.42, 688.43, 688.36, etc. Various rates	Belfont Sales Corp. v. U.S., 878 F.2d 1413 (1989) or Texas Instruments Inc. v. U.S., 673 F.2d 1375 (1982)	New York Quartz analog watches, etc.
+ 11%	676.52 4.3%	Agreed statement of facts	Boston Word processing machine ribbon spools and/or cassettes
5, tes	688.45, 688.42, 688.43, 688.36, etc. Various rates	Belfont Sales Corp. v. U.S., 878 F.2d 1413 (1989) or Texas Instruments Inc. v. U.S., 673 F.2d 1375 (1982)	New York Quartz analog watches, etc.
nd 1	6211.33.00 17%	Agreed statement of facts	Los Angeles Men's warm-up suits

C91/307 11/1/91 Carman, J.	Redwood Plastics	90-10-00545	681.39 5.7%
C91/308 11/1/91 Goldberg, J.	Riekes Crisa Corp.	77-10-04466	546.52 50%
C91/309 11/1/91 Goldberg, J.	Riekes Crisa Corp.	78-1-00193	546.54, 546.56 or 546.59 30% or 15%
C91/310 11/1/91 Goldberg, J.	Riekes Crisa Corp.	78-8-01441	546.54 or 546.56 30%
C91/311 11/1/91 Goldberg, J.	Riekes Crisa Corp.	78-11-01967	546.54, 546.56 546.59, etc. 30% or 15%
C91/312 11/1/91 Goldberg, J.	Riekes Crisa Corp.	81-9-01253	546.60 30%
C91/313 11/1/91 Goldberg, J.	Riekes Crisa Corp.	82-10-01385	546.60 or 546.66 30% or 15%
C91/314 11/1/91 Tsoucalas, J.	XTC Products, Inc.	89-5-00222	389.62 9%

668.05 Free of duty	Agreed statement of facts	Seattle Plastic spacers
548.05 12.5%	Riekes Crisa Corp. v. U.S., S.O. 90-33 (1990)	Laredo Glass liner trays
A548.05 Free of duty	Riekes Crisa Corp. v. U.S., S.O. 90-33 (1990)	Laredo Glasses for Yard of Ales
548.05 12.5%	Riekes Crisa Corp. v. U.S., S.O. 90-33 (1990)	Laredo Glasses for Yard of Ales
A548.05 Free of duty	Riekes Crisa Corp. v. U.S., S.O. 90-33 (1990)	Laredo Glasses for Yard of Ales
A548.05 Free of duty	Riekes Crisa Corp. v. U.S., S.O. 90-33 (1990)	Laredo Glasses for Yard of Ales
A548.05 Free of duty	Riekes Crisa Corp. v. U.S., S.O. 90-33 (1990)	Laredo Glasses for Yard of Ales
273.30 Free of duty	Agreed statement of facts	New York Cloth globe skins





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Index

Customs Bulletin and Decisions
Vol. 25, No. 48/49, December 4, 1991

U.S. Customs Service Treasury Decision

	T.D. No.	Page
Drawback decisions, synopses of	91-94	1
Companies:		
Brown & Williamson Tobacco Corp.	91-94-A	1
Continental Polymers, Inc.	91-94-B	2
Fina Oil and Chemical Co.	91-94-C	2
Glen Raven Mills, Inc.	91-94-D	2
Ingersoll-Rand Co.	91-94-E	2
Lubrizol Corp., The	91-94-F, G	3
Merchandise:		
Aluminum foil	91-94-A	1
Charcoal filter rod, dual	91-94-A	1
Cigarette papers	91-94-A	1
Intermediate 0.720.0	91-94-F	2
Menthol	91-94-A	1
Methyl methacrylate	91-94-B	2
Nylon yarn	91-94-D	2
Polypropylene film	91-94-A	1
Preventol CI-7-100	91-94-G	3
Propylene monomer	91-94-C	2
Rod blanks	91-94-E	2
Sugar, raw	91-94-A	1
Tobaccos, flue-cured and burley	91-94-A	1

General Notice

	Page
Valuation Encyclopedia, publication compiled by U.S. Customs Service, contains information concerning appraising imported merchandise; available for purchase from Superintendent of Documents	5

U.S. Court of International Trade

Slip Opinion

	Slip Op. No.	Page
United States v. Neman Brothers & Associates	91-97	9

Abstracted Decisions

	Decision No.	Page
Classification	C91/301-C91/314	12

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